

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-brl

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5 In the Matter of:

6

7 SECURITIES INVESTOR PROTECTION CORPORATION,

8 Plaintiff,

9

10 v.

11

12 BERNARD L. MADOFF, INVESTMENT SECURITIES, LLC.,

13 Defendant.

14 - - - - - x

15 United States Bankruptcy Court

16 One Bowling Green

17 New York, New York

18

19 December 17, 2013

20 10:03 a.m.

21

22 B E F O R E :

23 HON BURTON R. LIFLAND

24 U.S. BANKRUPTCY JUDGE

25

1 (cc-5584) Windels Marx Lane & Mittendorf, LLP Twelfth
2 Application for Allowance of Interim Compensation for
3 Services Rendered and Reimbursement of Actual and Necessary
4 Expenses Incurred from May 1, 2013 through July 31, 2013 and
5 Request for Partial Release of Holdback for Windels Marx
6 Lane & Mittendorf, LLP, Special Counsel, period: 5/1/2013 to
7 7/31/2014, fee: \$1,590,346.00, expenses: \$7,737.22

8
9 (cc-5567) Schiltz & Schiltz as Special Counsel to the
10 Trustee Application for Allowance of Interim Compensation
11 for Services Rendered and Reimbursement of Actual and
12 Necessary Expenses Incurred from May 1, 2013 through July
13 31, 2013 for Schiltz & Schiltz, Special Counsel, period:
14 5/1/2013 to 7/31/2013, fee: \$65,470.66, expenses: \$4,255.59

15
16 (cc-5568) Higgs & Johnson (formerly Higgs Johnson Truman
17 Bodden & Co.) as Special Counsel to the Trustee's
18 Application for Allowance of Interim Compensation for
19 Services Rendered and Reimbursement of Actual and Necessary
20 Expenses Incurred from May 1, 2013 through July 31, 2013 for
21 Higgs, Johnson, Truman, Bodden & Co., Special Counsel,
22 period: 5/1/2013 to 7/31/2013, fee: \$70,193.25, expenses:
23 \$1,186.90

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1 (cc-5569) Soroker - Agmon as Special Counsel to the Trustee
2 Application for Allowance of Interim Compensation for
3 Services Rendered and Reimbursement of Actual and Necessary
4 Expenses Incurred from May 1, 2013 through July 31, 2013 for
5 Soroker-Agmon, Special Counsel, period: 5/1/2013 to
6 7/31/2013, fee: \$187,952.44, expenses: \$74.34

7
8 (cc-5570) Graf & Pitkowitz Rechtsanwälte GmbH as Special
9 Counsel to the Trustee's Application for Allowance of
10 Interim Compensation for Services Rendered and Reimbursement
11 of Actual and Necessary Expenses Incurred from May 1, 2013
12 through July 31, 2013 for Graf & Pitkowitz Rechtsanwälte
13 GmbH, Special Counsel, period: 5/1/2013 to 7/31/2013, fee:
14 \$548,430.68, expenses: \$5,068.65

15
16 (cc-5571) SCA Creque as Special Counsel to the Trustee
17 Application for Allowance of Interim Compensation for
18 Services Rendered and Reimbursement of Actual and Necessary
19 Expenses Incurred from May 1, 2013 through July 31, 2013 for
20 SCA Creque, Special Counsel, period: 5/1/2013 to 7/31/2013,
21 fee: \$28,090.07, expenses: \$20.00

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1 (cc-5572) Young, Conaway, Stargatt & Taylor, LLP as Special
2 Counsel to the Trustee Application for Allowance of Interim
3 Compensation for Services Rendered and Reimbursement of
4 Actual and Necessary Expenses Incurred from May 1, 2013
5 through July 31, 2013 for Young, Conaway, Stargatt & Taylor,
6 LLP, Special Counsel, period: 5/1/2013 to 7/31/2013, fee:
7 \$20,503.80, expenses: \$1,555.39

8
9 (cc-5573) Williams, Barristers & Attorneys as Special
10 Counsel to the Trustee Application for Allowance of Interim
11 Compensation for Services Rendered and Reimbursement of
12 Actual and Necessary Expenses Incurred from May 1, 2013
13 through July 31, 2013 for Williams, Barristers & Attorneys,
14 Special Counsel, period: 5/1/2013 to 7/31/2013, fee:
15 \$101,219.42, expenses: \$0

16
17 (cc-5566) Trustee and Baker & Hostetler, LLP's Thirteenth
18 Application for Allowance of Interim Compensation for
19 Services Rendered and Reimbursement of Actual and Necessary
20 Expenses Incurred from May 1, 2013 through July 31, 2013 for
21 Baker & Hostetler, LLP, Trustee's Attorney, period: 5/1/2013
22 to 7/31/2013, fee: \$31,487,024.25, expenses: \$810,213.07

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1 (cc-5574) Taylor Wessing as Special Counsel to the Trustee
2 Application for Allowance of Interim Compensation for
3 Services Rendered and Reimbursement of Actual and Necessary
4 Expenses Incurred from May 1, 2013 through July 31, 2013 for
5 Taylor Wessing, Special Counsel, period: 5/1/2013 to
6 7/31/2013, fees: \$3,609,012.69, expenses: \$2,056,092.17

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8 (cc-55834) Kelley, Wolter & Scott, P.A. as Special Counsel
9 to the Trustee Application for Allowance of Interim
10 Compensation for Services Rendered and Reimbursement of
11 Actual and Necessary Expenses Incurred from July 1, 2013
12 through July 31, 2013 for Kelley, Wolter & Scott, P.A.,
13 Special Counsel, period: 7/1/2013 to 7/31/2013, fees:
14 \$3,733.20, expenses: \$110.00

15
16 (cc-5575) UGGC & Associates as Special Counsel to the
17 Trustee Application for Allowance of Interim Compensation
18 for Services Rendered and Reimbursement of Actual and
19 Necessary Expenses Incurred from May 1, 2013 through July
20 31, 2013 for UGGC & Associates, Special Counsel, period:
21 5/1/2013 to 7/31/2013, fees: \$170,393.77, expenses:
22 \$4,896.64

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1 (cc-5576) Triay Stagnetto Neish as Special Counsel to the
2 Trustee Application for Allowance of Interim Compensation
3 for Services Rendered and Reimbursement of Actual and
4 Necessary Expenses Incurred from May 1, 2013 through July
5 31, 2013 for Triay Stagnetto Neish, Special Counsel, period:
6 5/1/2013 to 7/31/2013, fees: \$31,993.53, expenses: \$221.87
7

8 (cc-5577) Werder Vigano as Special Counsel to the Trustee
9 Application for Allowance of Interim Compensation for
10 Services Rendered and Reimbursement of Actual and Necessary
11 Expenses Incurred from May 1, 2013 through July 31, 2013 for
12 Werder Vigano, Special Counsel, period: 5/1/2013 to
13 7/31/2013, fees: \$5,701.15, expenses: \$0
14

15 (cc-5578) Greenfield Stein & Senior, LLP as Special Counsel
16 to the Trustee Application for Allowance of Interim
17 Compensation for Services Rendered and Reimbursement of
18 Actual and Necessary Expenses Incurred from May 1, 2013
19 through July 31, 2013 for Greenfield Stein & Senior, LLP,
20 Special Counsel, period: 5/1/2013 to 7/31/2013, fees:
21 \$863.10, expenses: \$0
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1 (cc-5579) Browne Jacobson, LLP as Special Counsel to the
2 Trustee Application for Allowance of Interim Compensation
3 for Services Rendered and Reimbursement of Actual and
4 Necessary Expenses Incurred from May 1, 2013 through July
5 31, 2013 for Browne Jacobson, Special Counsel, period:
6 5/1/2013 to 7/31/2013, fees: \$408,874.01, expenses:
7 \$14,836.89

8
9 (cc-5580) Eugene F. Collins as Special Counsel to the
10 Trustee Application for Allowance of Interim Compensation
11 for Services Rendered and Reimbursement of Actual and
12 Necessary Expenses Incurred from May 1, 2013 through July
13 31, 2013 for Eugene F. Collins, Special Counsel, period:
14 5/1/2013 to 7/31/2013, fees: \$87,053.58, expenses: \$240.10

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16 (cc-5581) Ritter & Ritter Advokatur as Special Counsel to
17 the Trustee Application for Allowance of Interim
18 Compensation for Services Rendered and Reimbursement of
19 Actual and Necessary Expenses Incurred from May 1, 2013
20 through July 31, 2013 for Ritter & Ritter Advokatur, Special
21 Counsel, period: 5/1/2013 to 7/31/2013, fees: \$38,150.06,
22 expenses: \$1,851.92

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(cc-5582) Munari Giudici Maniglio Panfili E Associati as
Special Counsel to the Trustee Application for Allowance of
Interim Compensation for Services Rendered and Reimbursement
of Actual and Necessary Expenses Incurred from May 1, 2013
through July 31, 2013 for Munari Giudici Maniglio Panfili E
Associati, Special Counsel, period: 5/1/2013 to 7/31/2013,
fees: \$56,337.36, expenses: \$201.21

Transcribed by: Sherri L. Breach, CERT*D-397

1 A P P E A R A N C E S :

2 SECURITIES INVESTMENT PROTECTION CORPORATION (SiPC)

3 Attorneys for Plaintiff

4 805 15th Street, N.W.

5 Suite 800

6 Washington, D.C. 20005

7

8 BY: KEVIN H. BELL, ESQ.

9

10 BAKER HOSTETLER

11 Attorneys for Irving Picard, Trustee

12 45 Rockefeller Plaza

13 New York, New York 10111

14

15 BY: IRVING H. PICARD, ESQ.

16 DAVID J. SHEEHAN, ESQ.

17

18 ALSO APPEARING:

19 HOWARD SIMON

20

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1 P R O C E E D I N G S

2 THE COURT: Good morning, all.

3 (A chorus of good morning)

4 THE COURT: Look what the snow can do.

5 Unbelievable.

6 THE CLERK: SiPC v BMIS.

7 THE COURT: Where's my -- where's my off button
8 here? We got a new system.

9 (Pause)

10 UNIDENTIFIED SPEAKER: Turn it down.

11 MR. SHEEHAN: It's quite all right, Your Honor.

12 Thank you for accommodating us today.

13 THE COURT: It's not a problem.

14 MR. PICARD: There are a few people, I think,
15 stuck in the line downstairs.

16 THE COURT: Shall we give them time, then?

17 MR. SHEEHAN: Well, the only person who I'm sure
18 would like to be heard is Mr. Bell who is here from SiPC and
19 I understand he's in the line. So --

20 THE COURT: All right. We'll take --

21 MR. SHEEHAN: I don't know how long it will be.

22 THE COURT: We'll take second call.

23 MR. SHEEHAN: Okay.

24 THE COURT: Fifteen -- 15 minutes.

25 MR. SHEEHAN: Okay. Fine, Judge. All right.

1 Thanks.

2 THE COURT: Is it possible to make an announcement
3 downstairs that anybody waiting for this hearing could be
4 brought forward? Contact the guards.

5 UNIDENTIFIED SPEAKER: I'll --

6 THE COURT: Yeah.

7 (Recess taken at 10:05 a.m.; resume at 10:13)

8 THE CLERK: SiPC v BMIS.

9 MR. SHEEHAN: Good morning, Your Honor. David --

10 THE COURT: Good morning, Mr. Sheehan.

11 MR. SHEEHAN: -- Sheehan on behalf of the trustee
12 from Baker & Hostetler.

13 THE COURT: Can we have appearances?

14 MR. PICARD: Irving Picard, the trustee.

15 MR. BELL: Kevin Bell from the Securities Investor
16 Protection Corporation.

17 MR. SIMON: Howard Simon from Windels Marx.

18 MR. SHEEHAN: Thank you, Your Honor.

19 Your Honor, first of all, thank you very much for
20 this accommodation seeing us here to -- on special notice
21 here this morning. I know that in the past what I've done
22 is, is gone through a recitation of the work done by a
23 number of the law firms internationally that have worked for
24 us and, aside from one significant event which took place
25 during the reporting period, I thought today I would forego

1 that and actually talk more about what the trustee's counsel
2 has been doing and what's been happening in the major cases
3 that it is handling together with Windels Marx who has been
4 working with us hand in hand in most of those cases, if
5 that's all right with Your Honor?

6 THE COURT: Sure.

7 MR. SHEEHAN: So starting first, of course, in the
8 international arena there was, as Your Honor is well aware,
9 an event that took us, quite honestly, somewhat by surprise,
10 and that is, is that we tried Sonja Kohn matter in the
11 United Kingdom, tried it for six weeks without a jury before
12 Judge Popplewell. He then rendered a decision sometime in
13 early October in which he found for the defendants and did
14 find against in that case not the trustee, but Stephen Akers
15 who is the liquidator for MSIL in London and found that
16 Sonja Kohn was, indeed, a legitimate business woman who was
17 entitled to receive these payments, notwithstanding the
18 allegations and proofs of the -- of the liquidator, Mr.
19 Akers, to the effect that the company was insolvent, which
20 we thoroughly proved, we thought, through the auspices of
21 FTI.

22 Mr. Popplewell or Judge Popplewell did his own
23 analysis. There was no contest of the solvency, no expert
24 presented in -- against it. In fact, it was not challenged.
25 But he, on his own, found the company to be solvent by

1 reviewing the records and found \$38 million that was, in
2 fact, not proven to be stolen money among the hundreds and
3 hundreds of millions of dollars that we did prove to be
4 stolen, billions to be exact, and said, therefore, it was
5 solvent from his perspective.

6 Once he made that finding the rest that flowed
7 from that made it very difficult for us, as Your Honor can
8 surmise, in the sense that the ratification of what was an
9 order from the owner of the company, Mr. Madoff, who he
10 found to be someone who at that time they could rely upon as
11 having sound business judgment and, therefore, he could,
12 therefore, go ahead and pay these payments to Sonja Kohn if
13 he wished to because it was his company.

14 And I can tell you this, that the legal industry
15 in the United Kingdom is royaling with this judgment as to
16 what the responsibilities are for directors at this point
17 because this seems to give them a free reign to do anything
18 they damn well pleased want.

19 So we've looked at that very, very carefully. We
20 actually had what I refer to euphemistically as a cold silk
21 (sic) look at it, meaning that we've had a member of the
22 Queen's bench who is a silk look at it, Robin Ditcher (ph)
23 who is a very, very talented foremost bankruptcy lawyer in
24 the United Kingdom, a barrister, and he looked at it and
25 gave us the opinion that while it was challengeable, it

1 would be very, very difficult for us to succeed on appeal
2 given the findings of the Court, given the fact that the
3 Court was both the fact-finder as well as the arbiter of the
4 law.

5 That being the case and it being a very, very
6 narrow ruling, we were seeking there only the monies paid to
7 Sonja Kohn in return for what were supposed to be reports,
8 financial analysis and reports that she would develop for
9 them and then assist MISL as well as BLMIX (sic).

10 We had an expert testify that they were valueless
11 and that they were plagiarized and he said, well, that was
12 up to Mr. Madoff to decide. If -- he didn't disagree they
13 were plagiarized. He simply thought, the Court, that if Mr.
14 Madoff wanted to pay for plagiarized material that was his
15 business.

16 So it was a very, very interesting outcome for us.
17 It was kind of a bizarre ruling to say the least. But that
18 being the case, I must admit to you that while it was
19 difficult for us to arrive at the conclusion not to take the
20 appeal, we did decide to do that. We have preliminarily,
21 through Mr. Aker's has paid some of the counsel fees there.
22 I don't think it will have any impact on the estate here.
23 It will impact the monies that would have otherwise been
24 distributed to Mr. Picard by MSIL because they'll be
25 diminished as a result of these fees being paid.

1 But, overall, the impact on us; that is, the cases
2 that we have here before Your Honor, the cases that we're
3 prosecuting throughout Europe -- for example, we've already
4 been in contact with the Liechtenstein, Luxembourg and
5 Austrian officials, all of whom consider the decision, to
6 put it mildly, an outlier. They're not relying upon it at
7 all. They don't see it as persuasive and they don't
8 understand how the Court reached the result it did.

9 So having said all that, though, that that kind of
10 a bizarre detour as it were, and I use that term advisably,
11 in the middle of this five-year litigation has been
12 something of an interesting time for us. But at the end of
13 the day, we've made, I think, the considered and correct
14 judgment that what we should do here is just move on. We
15 will continue with our litigation.

16 We have already been and we have lawyers right now
17 in Vienna working with the Austrian authorities because the
18 target there ultimately, as Your Honor well knows from the
19 pleadings that we file, is not Sonja Kohn, but her as the go
20 between for Bank of Austria, Bank Medici, in which she was
21 the 75 percent owner and Bank of Austria was the 25 percent
22 owner, and then after that, of course, UniCredit who
23 ultimately, a bank in Italy, that ultimately owns Bank of
24 America and whose tenure most of the fraudulent transfers
25 took place.

1 So while it has something of an impact on the
2 estate generally, it's de minimis, but only in -- in that
3 legally we do not believe after analysis that we will have
4 any problems with it. Although I do believe, as I think
5 Your Honor well understands, that you will hear about it. I
6 don't doubt that some of our colleagues -- I've heard
7 already from some of the attorneys here -- that how could we
8 possibly move forward now in light of these issues with
9 regard to certain defendants.

10 Again, that's ultimately for Your Honor to decide.
11 It's the trustee's position that this should have no impact
12 whatsoever and ultimately, if those issues are raised, we'll
13 litigate them before Your Honor and Your Honor will decide
14 what impact there really is going to be had here.

15 So that was the major event in Europe. The rest
16 of the events that took place over there were more or less
17 routine, if anything is routine in the Madoff matter,
18 meaning that there was continuing ongoing investigations
19 throughout those jurisdictions. The trustee, other than the
20 setback in the United Kingdom, has been successful in every
21 other arena in terms of moving forward and working
22 cooperatively with the authorities.

23 There is no trial scheduled in Europe at this
24 point that will take place before any further trials will
25 take place here, which we fully anticipate will happen this

1 year, which is this year being -- I'm sorry -- 2014, which
2 is probably a good segway into what the trustee is actually
3 and Baker & Hostetler have been doing during the reporting
4 period. And I may step outside out that a little bit just
5 to complete a thought.

6 But what we've been doing since Judge Rakoff
7 issued his rulings earlier on in the case in Katz Wilpon and
8 some of its progeny and he decided that the standard of --
9 or proof of good faith would involve actual intent; that we
10 have to prove not a actual -- that they had actual intent --
11 actual intent meaning that they had knowledge of the fraud
12 where some have argued knowledge of a Ponzi scheme.

13 So he gave us guidelines, as Your Honor will
14 recall, because in that decision that he rendered he gave us
15 guidelines in the sense that he reviewed our Cohmad
16 complaint and he found a Cohmad complaint, thereby
17 implicitly without overtly stating, that it's a pleading
18 standard. He found that the Cohmad complaint withstood the
19 analysis of what was required in order to allege actual
20 intent.

21 And if you read the Cohmad complaint it talks
22 about Cohmad complaint -- it talks about intent in terms of
23 knowledge of a fraud. We never mentioned Ponzi scheme in
24 that complaint. So if that withstood the challenge, we
25 believe that the standard is actual knowledge of the fraud.

1 THE COURT: Interestingly, in today's media
2 there's an essay by Judge Rakoff where he seems to extol the
3 concept of willful blindness.

4 MR. SHEEHAN: I understand that. Well, and we
5 found other decisions by Judge Rakoff that equates willful
6 blindness with actual intent. So I think it's going to be
7 an interesting journey as we move forward because I -- as
8 Your Honor knows, and I don't want to step on that here, but
9 there is already a motion before Your Honor seeking to
10 dismiss one of our complaints based on that standard. It's
11 -- it will be -- it's not already fully briefed, it -- I
12 think it is actually.

13 But, in any event, what we've been doing is this.
14 And a lot of the effort of the trustee and his counsel were,
15 in all of the cases that we have that allege bad faith, have
16 been amending the complaints. Throughout the three or four
17 years leading up to that decision, we were doing a lot of
18 discovery. We were discovering third parties. We were
19 actually engaging in some 2004s with regard to even the
20 parties themselves with regard to issues that we could
21 proceed with.

22 As Your Honor will recall, Your Honor found that
23 very SiPC case in which 2004s can go forward even though
24 litigation has been instituted if you're going with regard
25 to a third party who has not been joined to the litigation

1 as yet.

2 So we've been doing all of those things and
3 amending all of the complaints internally in full
4 anticipation that we will either have to do it by way of a
5 motion made to dismiss and, therefore, have to upgrade, if
6 you will, our complaints, or we will do them voluntarily.
7 You will start to see, as we did in Merca (sic), we had
8 filed the complaint and then the motion to dismiss was
9 filed.

10 We anticipate that there will be a good deal of
11 motion practice that will take place with regard to that and
12 we're fully prepared for it because we've been working very,
13 very hard to amend our complaints and get them ready.

14 In addition, we've re-crafted a lot of our
15 discovery. As Your Honor might suspect, because of the
16 motion to withdraw the reference practice that took place
17 starting in 2011 and all through 2012 into 2013, we were
18 slowed down quite a bit with regard to obtaining discovery
19 in any number of matters. But that didn't stop us from
20 pursuing discovery in many, many cases and we have been
21 doing that.

22 A good deal of it has been third party discovery
23 because, as Your Honor well knows, once it reached the
24 recipient or the defendant in any of these cases -- and this
25 is another area we've worked very hard on -- there are going

1 to be a lot of subsequent transferees and there are a number
2 of subsequent transferee actions that we've already brought,
3 and there may even still be some that we are yet to bring
4 because we have not a -- made the initial avoidances yet.

5 But the difficulty there is is that in this
6 instance many of the people that are on the subsequent side
7 are nominees. We're not looking at the actual recipient
8 (sic) or the ultimate person who is going to get the money.
9 So we are penetrating through those nominees. That's true
10 with Kingate, for example. That's true in a number of other
11 areas. It was true, for example, in Embest (ph) which we
12 settled with.

13 So the hurdles here aren't your normal hurdles of
14 just chasing the money and getting banks to give you all of
15 the transfers. We do do that and we are not only going
16 through a number of Rule 45 subpoenas to banks to get all of
17 those records, we are also sending preservation letters out
18 because as time has progressed we've lost time due to the
19 motions to withdraw the reference. We're concerned about
20 bank records. And although there should be holds on all of
21 these records, we're not relying up on that. We're reaching
22 out to all the banks, making sure that the banks preserve
23 records with regard to all of these transactions because in
24 order to prove them, having those bank records will be of
25 great assistance to us.

1 So you can see we're operating on many fronts here
2 with regard to all of these cases. And when people look at
3 our efforts and they question, well, why are you spending
4 this much time and money, it's the multiples that are
5 involved here. Every one of these cases involves hundreds
6 of millions if not billions of dollars. They are adequately
7 defended, to put it mildly, by all of their, you know,
8 esteemed counsel and they are not going to just simply turn
9 over everything to us. It's been quite the battle on each
10 of these fronts.

11 And we've been trying to resolve as many of them
12 because I know that's Your Honor preferences, as it is with
13 most courts, not to have to handle these discovery disputes.
14 And we've been pretty successful, by and large, in most of
15 them, including recently Your Honor's entry of the order
16 with regard to the data room, third party data room, which
17 is going to, I think, be a very innovative tool. We'll save
18 a lot of time and money, and we spent a lot of time during
19 the reporting period putting that together and negotiating
20 with all the parties that were involved, a myriad
21 objections. As Your Honor can imagine, just the creative
22 imagination of lawyers to find an objection to a discovery
23 procedure knows no bounds.

24 So they -- we dealt with all of those. And then
25 we obviously filed the order. The order has now been

1 entered. We're in the process of setting that up because
2 next year, as I said earlier, is going to be an incredible
3 year in terms of discovery, motion practice and in some
4 instances, as Your Honor knows, we've already schedule a
5 trial in the good faith cases with Your Honor, the MUUS
6 case. We fully anticipate that that hopefully will become
7 the standard by which we can then craft mediations and
8 resolve the balance of those cases.

9 We have been engaging with a collective group, if
10 you will, of good faith defense counsel to try to craft and
11 we'll try to bring to Your Honor a coordinated calendar so
12 that we can operate in a way that everyone is aware of
13 what's transpiring.

14 That with regard to even the motion practice that
15 is currently before Your Honor through Ms. Chapeman (ph)
16 that what we try to do there -- and I've reached out to
17 defense counsel. I would like not to have Your Honor or
18 ourselves have to deal with this on a repeated basis. There
19 should be a way to bring everyone to this forum now so that
20 once this is decided we can move forward with these cases
21 and have all these issues behind us, save for whatever
22 appeal may take place.

23 All that is happening, but that is, as I said
24 earlier I'm stepping outside the reporting period, that's
25 more so happening today. But, nonetheless, is a direct

1 derivative of what we were doing during the reporting period
2 time and that is knowing that eventually the motions to
3 withdraw the reference in Judge Rakoff's decision would be
4 handed down based upon his Stern Marshall decision that they
5 would be coming to you, and that, therefore, we should be
6 prepared for trial. And that's what we've been doing and
7 spending an enormous amount of time doing that and working,
8 you know, as I say, very cooperatively with most of the
9 defense counsel to get all of these things ready.

10 Throughout that process, Windels Marx has been our
11 right hand. There is no question that they have done a
12 superb job here with regard to all the cases that they have.
13 We are in daily communication with them. We share a great
14 deal of information, still abiding, of course, by whatever
15 conflict walls that we need to have engaged because of their
16 work for us in matters for which we have a conflict. But
17 there are matters that they work on.

18 For example, we have all these leverage cases that
19 I know Your Honor's familiar with, but just quickly they are
20 the cases where banks, such as Nomura and brokerage houses
21 such as Merrill Lynch and Citi and others, and JPMorgan for
22 that matter, created structured products that they should to
23 their high net worth individuals and then took those
24 products and invested them in places like Fairfield on a
25 three for one basis, either as notes or derivatives or

1 swaps.

2 And these are very complicated transactions
3 involving, again, hundreds of millions of dollars. We've
4 sued all of those banks for those transactions to get those
5 redemptions back because, as Your Honor will recall, very
6 startlingly in the JPMorgan matter they redeemed in October,
7 all right, at the same time they filed their SARS report
8 that they were aware of illegal activity in the UK. So
9 needless to say we think we have a strong case with regard
10 to that redemption.

11 But the point is is that that kind of activity was
12 not unique. It's ripe throughout all of these structured
13 products, but they're difficult cases, difficult because of
14 the sophistication of the investment products that were
15 involved and because of the fact that they went through
16 several layers to go through all of that.

17 So, in particular, Mr. Simon, who is here in court
18 today, is heading up several of those leverage cases, even
19 though there's no conflict that we have with regard to it
20 because we need the skill and support of that firm to make
21 that happen. And it's been invaluable to us and to the
22 estate and obviously to the trustee. So that the combined
23 effort of both of these firms has been, you know, towards
24 bringing these cases to the floor.

25 Along the way, as Your Honor knows, we have,

1 remarkably enough, notwithstanding, you know, the if you
2 will have that may have been created by the motions to
3 withdraw the reference and the lack of clarity, we have
4 still managed a number of settlements. Some of them smaller
5 like Beacon Andover or larger like Maxum. But each of these
6 represents -- you know, I say smaller and yet, you know, it
7 was over \$20 million in Beacon Andover. There used to be a
8 day when you would say you had a \$20 million settlement and
9 it was a very nice settlement. You were very proud to bring
10 that, and we are proud to bring that to the Court.

11 But at the same time when you look at that
12 compared to the others that we've managed to achieve, it
13 does look smaller, but at the same time very significant
14 that it happens because what is also going on during the
15 reporting period is this, is that because of the relentless
16 work of the trustee and his counsel and those whose support
17 it like Windels Marx, I think we've been able to maintain
18 the credibility of the trustee and the viability of all of
19 his causes of action, notwithstanding the attacks that have
20 been taken upon him in the Federal District Court in a lot
21 of the motions to withdraw the reference.

22 I think the recent decisions by Judge Rakoff also
23 vindicate the narrative created by the trustee. The trustee
24 has taken the narrative throughout that what has gone on
25 here is totally consistent with the Bankruptcy Code and the

1 law before it. I think the recently antecedent debt
2 decision and the five -- and the subsequent transferee
3 decision or 550 decision by Judge Rakoff proves that because
4 if you read both of those decisions they are very
5 traditional decisions of bankruptcy law, which is what we
6 always said ultimately would win out here.

7 And so that narrative has -- that has sustained us
8 throughout this process is recognized by our adversaries and
9 continues to be a very strong part of what we do every day
10 in terms of trying to advance the cases. It's in our
11 interest to close these cases as quickly as possible.

12 I should report to Your Honor, for example, that
13 on time based damages, notwithstanding your efforts and
14 ours, the Second Circuit has not as yet acted on our ask for
15 -- our request for a direct appeal, even though I'm told we
16 have very good papers there. Your Honor and counsel acted
17 promptly. But we can't control those things.

18 But what we can do is do things as efficiently and
19 as quickly as possible, keep the pressure on, and which I
20 think we do across many, many fronts every day. This is
21 what I call to my colleagues a five-year TRO. It never
22 stops. Every day there's something going on and something
23 happening, and we're expected to respond to it. Even now,
24 even though it's outside the reporting period, there's a
25 very public ongoing criminal trial. We work and assist the

1 U.S. Attorney in that matter every day.

2 So we're there assisting and providing support
3 logistically, witnesses such as Bruce Dubinsky who we spent
4 many, many hours and many, many dollars preparing because
5 this is a very difficult analysis. It may look simple at
6 the conclusion, but going through the process is very, very
7 significant.

8 So I wanted to this morning, Your Honor -- as I
9 said, a lot of this, as Your Honor well knows, is laid out
10 in our interim reports and obviously in the current fee
11 application. But I thought in the past when I have dwelled
12 on the international aspects of this case it might look as
13 though I was overlooking what we do here in the United
14 States. And it is a significant effort, as I say, every
15 day.

16 So I wanted to submit that to Your Honor together
17 with all of the international applications and those of
18 Windels Marx.

19 And now I would like to turn the podium over to
20 Mr. Bell for his comments with regard to the applications
21 before Your Honor.

22 Thank you, Your Honor.

23 THE COURT: With respect to -- Mr. Sheehan --

24 MR. SHEEHAN: Yes.

25 THE COURT: Excuse me a minute.

1 MR. SHEEHAN: Yes, Your Honor.

2 THE COURT: -- to the time based damages
3 certification to the circuit, I assume you've been joined
4 with the parties on the other side with respect to --

5 MR. SHEEHAN: Yes. It's a collective effort.

6 THE COURT: Yeah. I wonder how or where in the
7 circuit is -- that there's \$1.4 billion --

8 MR. SHEEHAN: It was prominently mentioned in our
9 papers that this is a significant -- that, for example, it's
10 a ten-cent swing weaving up from 43 to a 53 cent
11 distribution if we did not have the reserve. And we told
12 them that.

13 THE COURT: Does the circuit procedure include a
14 meeting with the -- there used to be some meeting with a --

15 MR. SHEEHAN: Well, Your Honor --

16 THE COURT: -- a committee?

17 MR. SHEEHAN: -- (indiscernible) because just
18 yesterday I talked to defense counsel about setting up a
19 call with our case manager to do just that, so that we can
20 bring it to their attention like -- as -- without being
21 disrespectful asked our case manager, can we have a
22 conference so that we can see where this is and that we can
23 keep it moving.

24 THE COURT: Very well. Thank you.

25 MR. SHEEHAN: Thank you, Your Honor.

1 MR. BELL: Good morning, Your Honor. Kevin Bell
2 for SiPC.

3 THE COURT: Sorry for the interruption, Mr. Bell.

4 MR. BELL: We -- excuse me, Your Honor.

5 THE COURT: I said sorry for the interruption.

6 MR. BELL: Oh, no problem, Your Honor.

7 SiPC has filed its recommendations in support of
8 the international foreign special counsel, Windels, Marx;
9 Young, Conaway; the Kelley firm, and the Greenfield firm.
10 And I think they speak for themselves.

11 One point on Windels is that SiPC wholeheartedly
12 supports the reduction of the holdback that's been kept back
13 at our request in the Court's order by 50 percent at this
14 time because we do believe, as Windels said, it becomes
15 burdensome for a firm that size to have that large sum of
16 money withheld. And SiPC supports an entry of an order
17 reducing that holdback at this time.

18 And we echo Mr. Sheehan's comments about the
19 excellence of the work by the Windels firm throughout and,
20 particularly, Mr. Simon.

21 As to the Baker Hostetler revised recommendation,
22 we filed -- some lawyer at SiPC, namely myself, forgot to
23 talk about the reduction of the holdback in the first
24 recommendation, so we filed one that afternoon after I
25 realized my error. SiPC, as in paragraph 4 you will see

1 that even after the applications were filed by Baker on or
2 about November 21st, we continued our review and we
3 requested additional adjustments which you will see in the
4 submission by Baker of the proposed order and the
5 attachment.

6 The ultimate reduction by Baker is approximately
7 14.73 percent from the standard fees they would charge.
8 This reduction includes the voluntary ten percent reduction
9 which all counsel for the trustee have agreed to throughout
10 this case, including all the applicants here.

11 SiPC supports the application and also with regard
12 to Baker the reduction of the holdback by 25 percent at this
13 time which equals a little more than \$8.7 million in a
14 reduction of the holdback.

15 SiPC, as you know, on every one of these
16 applications -- and this is the thirteenth by Baker
17 Hostetler -- spends a good deal of time at many levels by
18 SiPC lawyers, myself included, in discussions with Mr.
19 Sheehan with regard to adjustments, comments, and monitoring
20 of what is going on, and we participate regularly in
21 discussions going forward. And, in fact, I was talking to
22 my general counsel late yesterday evening about the issue
23 you just brought up about time based damages, and she says,
24 isn't it time enough for the circuit to set something.

25 So, you know, it's something that's there on our

1 mind because it does -- it does keep a significant sum of
2 money out of the customers' hands. And, you know, Your
3 Honor, when we started this case not many people thought we
4 would get more than two cents back to the customers and SiPC
5 would really appreciate getting that time based damages
6 decision that you issued affirmed by the circuit and, if
7 need be, a petition for cert denied by the Supreme Court so
8 that we can get that substantial sum of money into the hands
9 of the victims.

10 And so I will conclude by asking Your Honor to
11 enter the orders that have been submitted to you at this
12 time. And any questions you would wish, Your Honor, I can
13 try and answer.

14 THE COURT: Thank you, Mr. Bell.

15 MR. BELL: Thank you, Your Honor.

16 THE COURT: Anyone else want to be heard?

17 Well, as Mr. Bell pointed out, this is what, the
18 thirteenth --

19 MR. BELL: Thirteenth.

20 THE COURT: -- application. The ruling is based
21 upon the law which in the case on the trustee's fees and the
22 fees that are also ancillary here, the Court has almost no
23 discretion. There are a series of shalls (sic) in SIPA
24 78(eee)(b)(5)(a) and (c) which give the Court no discretion
25 when certain factors align themselves, and that is that the

1 allowances to be paid by SiPC, without reasonable
2 expectation of recoupment, there is -- and there's no
3 difference between the amounts requested and the amounts
4 recommended by SiPC, the Court shall -- and shall in caps --
5 award the amounts recommended by SiPC.

6 All of those factors have lined up here. The
7 Court, even if it had to go back beyond 1978 when the Court
8 did have discretion, probably under and I assume under every
9 factor that I've seen before me would not challenge the fees
10 that are requested here. I recognize the enormous amount of
11 effort and I also recognize the very substantial recoveries
12 that have been the sequela (sic) from that effort.

13 Accordingly, and in accordance with the
14 recommendations of SiPC, the voluntary discounts and the
15 requests for partial release of the holdbacks, I do grant
16 those requests.

17 MR. SHEEHAN: Thank you. Thank you, Your Honor.

18 THE COURT: Submit an appropriate order.

19 MR. SHEEHAN: Yes, we will, Your Honor.

20 (A chorus of thank you)

21 MR. SHEEHAN: And thank you again for
22 accommodating us today.

23 THE COURT: The snow let us all get here today. I
24 don't know if it will let us get out of here, but --

25 (Laughter)

1 MR. SHEEHAN: Yeah. Well, we all should leave
2 shortly.

3 THE COURT: Thank you, all.

4 MR. PICARD: Thank you, Your Honor.

5 (Whereupon these proceedings were concluded at 10:43
6 a.m.)

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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
(cc-5584) Windels Marx Lane & Mittendorf, LLP Twelfth Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 and Request for Partial Release of Holdback for Windels Marx Lane & Mittendorf, LLP, Special Counsel, period: 5/1/2013 to 7/31/2014, fee: \$1,590,346.00, expenses: \$7,737.22	32	13
(cc-5567) Schiltz & Schiltz as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for Schiltz & Schiltz, Special Counsel, period: 5/1/2013 to 7/31/2013, fee: \$65,470.66, expenses: \$4,255.59	32	13

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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
(cc-5568) Higgs & Johnson (formerly Higgs Johnson Truman Bodden & Co.) as Special Counsel to the Trustee's Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for Higgs, Johnson, Truman, Bodden & Co., Special Counsel, period: 5/1/2013 to 7/31/2013, fee: \$70,193.25, expenses: \$1,186.90	32	13
(cc-5569) Soroker - Agmon as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for Soroker-Agmon, Special Counsel, period: 5/1/2013 to 7/31/2013, fee: \$187,952.44, expenses: \$74.34	32	13

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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
(cc-5570) Graf & Pitkowitz Rechtsanwälte GmbH as Special Counsel to the Trustee's Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for Graf & Pitkowitz Rechtsanwälte GmbH, Special Counsel, period: 5/1/2013 to 7/31/2013, fee: \$548,430.68, expenses: \$5,068.65	32	13
(cc-5571) SCA Creque as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for SCA Creque, Special Counsel, period: 5/1/2013 to 7/31/2013, fee: \$28,090.07, expenses: \$20.00	32	13

I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
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(cc-5572) Young, Conaway, Stargatt & Taylor,

LLP as Special Counsel to the Trustee

Application for Allowance of Interim

Compensation for Services Rendered and

Reimbursement of Actual and Necessary

Expenses Incurred from May 1, 2013 through

July 31, 2013 for Young, Conaway, Stargatt

& Taylor, LLP, Special Counsel, period:

5/1/2013 to 7/31/2013, fee: \$20,503.80,

expenses: \$1,555.39 32 13

(cc-5573) Williams, Barristers & Attorneys

as Special Counsel to the Trustee Application

for Allowance of Interim Compensation for

Services Rendered and Reimbursement of Actual

and Necessary Expenses Incurred from May 1,

2013 through July 31, 2013 for Williams,

Barristers & Attorneys, Special Counsel,

period: 5/1/2013 to 7/31/2013, fee:

\$101,219.42, expenses: \$0 32 13

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I N D E X

RULINGS

DESCRIPTION

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(cc-5566) Trustee and Baker & Hostetler,
LLP's Thirteenth Application for Allowance
of Interim Compensation for Services
Rendered and Reimbursement of Actual and
Necessary Expenses Incurred from May 1,
2013 through July 31, 2013 for Baker &
Hostetler, LLP, Trustee's Attorney, period:
5/1/2013 to 7/31/2013, fee: \$31,487,024.25,
expenses: \$810,213.07

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(cc-5574) Taylor Wessing as Special Counsel
to the Trustee Application for Allowance of
Interim Compensation for Services Rendered
and Reimbursement of Actual and Necessary
Expenses Incurred from May 1, 2013 through
July 31, 2013 for Taylor Wessing, Special
Counsel, period: 5/1/2013 to 7/31/2013, fees:
\$3,609,012.69, expenses: \$2,056,092.17

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I N D E X

RULINGS

DESCRIPTION

PAGE

LINE

(cc-55834) Kelley, Wolter & Scott, P.A. as

Special Counsel to the Trustee Application

for Allowance of Interim Compensation for

Services Rendered and Reimbursement of Actual

and Necessary Expenses Incurred from July 1,

2013 through July 31, 2013 for Kelley, Wolter

& Scott, P.A., Special Counsel, period:

7/1/2013 to 7/31/2013, fees: \$3,733.20,

expenses: \$110.00

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(cc-5575) UGGC & Associates as Special

Counsel to the Trustee Application for

Allowance of Interim Compensation for

Services Rendered and Reimbursement of Actual

and Necessary Expenses Incurred from May 1,

2013 through July 31, 2013 for UGGC &

Associates, Special Counsel, period: 5/1/2013

to 7/31/2013, fees: \$170,393.77, expenses:

\$4,896.64

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I N D E X

RULINGS

DESCRIPTION

PAGE

LINE

(cc-5576) Triay Stagnetto Neish as Special
Counsel to the Trustee Application for
Allowance of Interim Compensation for
Services Rendered and Reimbursement of
Actual and Necessary Expenses Incurred
from May 1, 2013 through July 31, 2013 for
Triay Stagnetto Neish, Special Counsel,
period: 5/1/2013 to 7/31/2013, fees:
\$31,993.53, expenses: \$221.87

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(cc-5577) Werder Vigano as Special Counsel
to the Trustee Application for Allowance
of Interim Compensation for Services
Rendered and Reimbursement of Actual and
Necessary Expenses Incurred from May 1,
2013 through July 31, 2013 for Werder
Vigano, Special Counsel, period: 5/1/2013
to 7/31/2013, fees: \$5,701.15, expenses:
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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
(cc-5578) Greenfield Stein & Senior, LLP as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for Greenfield Stein & Senior, LLP, Special Counsel, period: 5/1/2013 to 7/31/2013, fees: \$863.10, expenses: \$0	32	13
(cc-5579) Browne Jacobson, LLP as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for Browne Jacobson, Special Counsel, period: 5/1/2013 to 7/31/2013, fees: \$408,874.01, expenses: \$14,836.89	32	13

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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
(cc-5580) Eugene F. Collins as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for Eugene F. Collins, Special Counsel, period: 5/1/2013 to 7/31/2013, fees: \$87,053.58, expenses: \$240.10	32	13
(cc-5581) Ritter & Ritter Advokatur as Special Counsel to the Trustee Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from May 1, 2013 through July 31, 2013 for Ritter & Ritter Advokatur, Special Counsel, period: 5/1/2013 to 7/31/2013, fees: \$38,150.06, expenses: \$1,851.92	32	13

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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
(cc-5582) Munari Giudici Maniglio Panfili E		
Associati as Special Counsel to the Trustee		
Application for Allowance of Interim		
Compensation for Services Rendered and		
Reimbursement of Actual and Necessary		
Expenses Incurred from May 1, 2013 through		
July 31, 2013 for Munari Giudici Maniglio		
Panfili E Associati, Special Counsel,		
period: 5/1/2013 to 7/31/2013, fees:		
\$56,337.36, expenses: \$201.21	32	13

C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the
foregoing transcript is a true and accurate record of the
proceedings.

Sherri L
Breach

Digitally signed by Sherri L Breach
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c=US
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SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber

CERT*D-397

Veritext

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Date: December 19, 2013